

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/636,078	Applicant(s) HELWIG, GREGORY S.	
	Examiner JENNIFER A. CHRISS	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See continuation page.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☒ Other: PTO-892.

/J. A. C./
 Examiner, Art Unit 1794

/Ula C Ruddock/
 Primary Examiner, Art Unit 1794

11. Applicant's arguments are not persuasive. Applicant argues that the Examiner's position relies entirely on two assumptions. Applicant indicates that the first assumption is that Dacron polyester has a melting point of 485 degrees F. It should be noted in column 5, lines 15 - 26, Chenoweth notes that the bicomponent synthetic fiber includes a core of a regular melt homopolymer polyester which for example has a melting/bonding temperature of 485 degrees F. Chenoweth specifically indicates that a suitable product (thus would meet the set forth criteria above such as the melting temperature) is a bi-component fiber with a Dacron polyester core. The Examiner submits that Chenoweth indicates that Dacron meets the requirement of a core having a melting temperature of 485 degrees F. Furthermore, according to Hawley's Condensed Chemical Dictionary, "Dacron" has a melting point of 250 degrees C which is equal to 482 degrees F which meets Applicant's requirements and is reasonably close to the melting point discussed in the reference. Applicant argues that the second assumption is that the synthetic fibers have the same exact melting point as the core of the bicomponent fibers. Chenoweth does not require that the fibers 14 melt during formation of the composite and actually only discusses bonds between the fibers that are from the sheath of the bicomponent fibers or the added thermosetting resin. The Examiner submits that the rejection as being anticipated or obvious over Chenoweth is valid. Applicant argues the same issues with nylon as the fibers 14. The Examiner submits that each fibers is discussed and it is reasonable to select a particular fiber based on the desired composite characteristics. As to the rejection of Chenoweth in view of McGregor, the Applicant argues that McGregor teaches the use of microspheres alone or unadhered to any binder while Chenoweth is solely directed to a composite with a binder. Although McGregor acknowledges deficiencies in the prior art products, Chenoweth does positively state that the expandable micro spheres have been applied as a thermal insulative material only when adhered together or to another material using some form of adhesive binder (column 2, lines 40 - 45). In considering the references as a whole, the Examiner submits that using microspheres of McGregor in the composite of Chenoweth is obvious and one would be motivated to add the microspheres to create a material with greater thermal insulative properties. Applicant argues that claims 18 - 19 and 22 - 23 refer to a surfacing veil wherein the outer polymer annulus comprises low melt copolymer polypropylene or polyethylene. The Examiner submits that Denton does provide support for using other combinations of sheath-core fibers such as polyethylene or polypropylene as the sheath. The Examiner submits Applicant argues that there must be a reason to combine the teachings of Chenoweth and Denton and cites KSR Int'l Co v. Teleflex, Inc. It should be noted that the same case supports the conclusion that the claim would have been obvious because substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time the invention was made. In this case, Denton establishes other suitable sheath-core combinations and the Examiner submits that all the elements have been established in the art and their combination would have yielded predictable results. The rejections are maintained.